

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ROBERTO DURAND,

Plaintiff,

v.

MS. MAURO,

Defendant.

Case No. 3:21-cv-00409-RCJ-WGC

**ORDER**

On September 14, 2021, the Court denied without prejudice Durand's application to proceed *in forma pauperis* (ECF No. 4), directing Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before November 15, 2021. On September 21, 2021, Durand submitted a second incomplete application to proceed *in forma pauperis* (ECF No. 5). To date Durand has failed to comply with the Court's Order (ECF No. 4).

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal

1 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of  
2 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming  
3 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,  
4 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with  
5 local rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey  
7 a court order, or failure to comply with local rules, the court must consider several factors:  
8 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
11 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at  
12 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 Here, the Court finds that the first two factors, the public's interest in expeditiously  
14 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
15 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
17 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
18 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring  
19 disposition of cases on their merits—is greatly outweighed by the factors in favor of  
20 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
21 the court's order will result in dismissal satisfies the "consideration of alternatives"  
22 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779  
23 F.2d at 1424. The Court's Order (ECF No. 4) stated that if Durand fails to comply, this  
24 case will be subject to dismissal without prejudice. Thus, Durand had adequate warning  
25 that dismissal would result from noncompliance with the Court's order to file a fully  
26 complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or  
27 before November 15, 2021.

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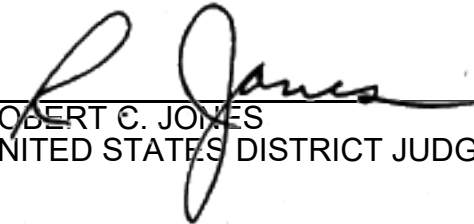
1 IT IS ORDERED that this action is DISMISSED WITHOUT PREJUDICE for  
2 Durand's failure to file a fully complete application to proceed *in forma pauperis* or pay  
3 the full \$402 filing fee in compliance with this Court's order dated September 14, 2021.  
4 (ECF No. 4).

5 IT IS FURTHER ORDERED that the application to proceed *in forma pauperis* (ECF  
6 No. 5) is DENIED as MOOT.

7 IT IS FURTHER ORDERED that the Clerk of Court will close the case and enter  
8 judgment accordingly.

9 IT IS SO ORDERED.

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11 DATED: This 24<sup>th</sup> day November, 2021.  
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16 ROBERT C. JONES  
17 UNITED STATES DISTRICT JUDGE  
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